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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,416	02/06/2004	Ming-Hsiung Huang	CFP00326 (18084/146)	6614
23595	7590	06/16/2006		
NIKOLAI & MERSEREAU, P.A. 900 SECOND AVENUE SOUTH SUITE 820 MINNEAPOLIS, MN 55402			EXAMINER HWANG, VICTOR KENNY	
			ART UNIT 3764	PAPER NUMBER

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/773,416	HUANG, MING-HSIUNG	
	Examiner	Art Unit	
	Victor K. Hwang	3764	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4 and 6-9 is/are rejected.
- 7) ☒ Claim(s) 3, 5 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities:  
on page 3, line 10, "321" presumably should be changed to --312--;  
on page 4, line 6, "a" presumably should be deleted; and  
on page 4, line 10, "Figs." presumably should be changed to --Fig.--.  
Appropriate correction is required.

### *Claim Objections*

2. Claims 3 and 7 are objected to because of the following informalities:  
in claim 3, line 5, the recitation "a" presumably should be deleted; and  
in claim 7, line 1, after the recitation "bar" the term --is-- presumably should be inserted.  
Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by *Watterson* (US Pat. 4,796,881). *Watterson* discloses an exercise device comprising two bases and a connection member 12 connected between the two bases, each base having an end member

which has a recess 32 defined therein. Two posts 21,22 are each composed of an outer tube 21,22 and an inner tube 38,39 (see Fig. 4) which is retractably received in the outer tube (see col. 5, lines 53-55). Each outer tube has a ball 34 connected to a lower end thereof and the ball is rotatably retained in the recess of the base corresponding thereto. Each recess 35 has a positioning recess defined in a wall enclosing the recess sized to receive the outer tube to permit the outer tube to be oriented in a lower-most position (see positioning recess in Fig. 3). Each of the outer and inner tubes includes a plurality of holes for receiving a pin through aligned holes. A bar 37 is connected between the two posts. A soft sleeve 36 is mounted to the bar. Each of the posts has a rod 38A, 39A extending transversely therefrom.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Holt* (US Pat. 5,064,190) in view of *Wilkinson* (US Pat. 5,176,377). *Holt* discloses an exercise device comprising two bases 30 and a connection member 31 connected between the two bases. Each base has an end member 33 which has a recess 34 or socket 80 defined therein. Two posts 14 are each adjustable in length by selective addition of pole extensions 73. Each post has a rounded distal end 71 or a ball joint 81 for being rotatably retained in the recess of the base corresponding thereto. The two posts may each have ring-shaped weights 88 selectively mounted thereto.

*Holt* does not disclose that each post is composed of an outer tube and an inner tube which is retractably received in the outer tube (claim 1); and each of the outer tubes includes a plurality of holes, each of the inner tubes includes a plurality of holes, and pins extending through respectively aligned holes of the outer and inner tubes (claim 6).

*Wilkinson* '377 discloses an exercise device comprising a length adjustable pole composed of an outer tube 6 and an inner tube 7 retractably received in the outer tube. Each of the outer tube and the inner tube includes a plurality of holes through which a respective pin 28 is selectively inserted into aligned holes. *Wilkinson* '377 shows that telescopic poles having selectively aligned holes for receiving a selection pin is a structure known in the art for adjusting the length of a pole.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the poles of *Holt* as telescopic poles with a plurality of selectively aligned holes for receiving a selection pin, as shown by *Wilkinson* '377, since the examiner takes Official Notice of the equivalence of inserting extension members and telescopic members for their use in the exercise art and the selection of any of these known equivalents to provide an adjustable length would be within the level of ordinary skill in the art.

#### ***Allowable Subject Matter***

7. Claims 3 and 5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose an exercise device as claimed wherein the outer tube and the inner tube each have a flanged for engagement with notches on each side of the ring-shaped weights (claim 3); or wherein the connection member has two open ends telescopically receiving the two bases, the two bases each having a plurality of holes, and two pins for extension through respectively aligned holes (claim 5).

*Holt* shows the annular weights supported by a lower weight collar, but does not teach a collar or flange on each of two portions of the post and the weight having notches for engagement with the flanges.

*Wilkinson '957* discloses annular weights that can be fitted to a vertical shaft by various means including screwing, clipping, clamping, hooking, pinning or pressure fit, but does not teach the weights being secured in the manner recited in claim 3.

*Heatwole '134* discloses a base having recesses for retaining a ball joint at the end of telescopic poles (Fig. 5) and in combination with *Heatwole '516* would have a bases that are adjustable in separation, but not in the manner as recited in claim 5.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Sachs et al.* (US Pat. 605,747), *Willner* (US Pat. 1,973,593), *Maxwell* (US Pat. 2,356,260), *Alcover* (US Pat. 2,909,371), *Heatwole* (US Pat. 4,285,516), *March et al.* (US Pat. 5,013,034), *Wostry* (US Pat. 5,244,444), *Heatwole* (US Pat. 5,391,134), *Haviv* (US Pat.

5,393,280), *Squires* (US Pat. 5,403,256), *Wilkinson* (US Pat. 5,586,957), *Humphrey* (US Pat. 5,971,891), *Rothschild* (US Pat. Pub. 2003/0013586 A1) and *Neblett* (GB 2 147 212 A) disclose exercise devices having structure related to the claimed invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
June 11, 2006